

AMENDED IN SENATE AUGUST 18, 1999

AMENDED IN SENATE JUNE 9, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1455

Introduced by ~~Committee on Insurance (Scott (Chair), Oller (Vice Chair), Calderon, Cox, Floyd, Havice, Keeley, Leonard, Machado, and Wayne)~~ Assembly Member Scott

February 26, 1999

An act to *amend Section 2871 of the Civil Code, to amend Section 1778 of the Code of Civil Procedure, and add Section 1872.91 to the Insurance Code, relating to* ~~closed insurance claims study~~ *insurance*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1455, as amended, ~~Committee on Insurance~~ Scott. Insurance: closed claims study : *resolution of claims*.

Existing law requires the Bureau of Fraudulent Claims in the Department of Insurance to annually compile and report basic claims information, including trends of payments by type of claim and other claim information that is generally provided in a closed claim study.

This bill would require the Department of Insurance on or before July 1, 2001, to complete, as specified, a closed claim study of automobile insurance claims closed in ~~1998~~ 1999. The bill would require that a copy of the completed study be delivered to each committee in the Assembly and the Senate that has jurisdiction over insurance legislation. *The bill would*

also require the department on or before July 1, 2006, to complete a similar study of automobile insurance claims closed during 2003, and to conduct similar studies at least once during each 10-year period thereafter. It would require the Judicial Council to complete by July 1, 2006, a study to identify changes in claims practices and patterns caused by the enactment of SB 1237 of the 1999–2000 Regular Session.

Existing law prohibits insurers from engaging in unfair claims settlement practices, and provides for sanctions against insurers who engage in unfair claims settlement practices with respect to coverage under a policy of liability insurance by means of administrative sanctions against the insurer. SB 1237 of the 1999–2000 Regular Session, the Fair Insurance Responsibility Act of 2000 or “FAIR,” would provide that an insurer shall act in good faith toward and deal fairly with 3rd-party claimants. It would provide that if an insurer engages in unfair claims settlement practices with respect to a 3rd-party claimant, the 3rd-party claimant would generally have the right, upon meeting certain conditions, to assert a cause of action against the insurer, except as specified.

This bill would make changes to the provisions of SB 1237, if SB 1237 becomes operative, which include eliminating the use of verdict amounts as evidence of insurer bad faith, limiting the prospective effect of that bill’s new 3rd party rights as to prior accidents, events, occurrences, or losses, and revising the presumption regarding insurer good faith and fair dealing arising from the submission of relevant claims to arbitration.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2871 of the Civil Code, as added
2 by Senate Bill 1237 of the 1999–2000 Regular Session, is
3 amended to read:

4 2871. (a) Every insurer, as defined in paragraph (3)
5 of subdivision (a) of Section 2870, doing business in the
6 State of California shall act in good faith toward and deal
7 fairly with third-party claimants. A third-party claimant



1 may bring an action against an insurer doing business in
2 the State of California to recover damages, including
3 general, special, and exemplary damages, for commission
4 of any unfair claims settlement practice specified in
5 subdivision (h) of Section 790.03 of the Insurance Code as
6 it relates to a third-party claimant.

7 (b) A third-party claimant shall not be entitled to
8 assert the remedies set forth in subdivision (a) unless the
9 third-party claimant (1) obtains in the underlying action
10 a final judgment after trial, a judgment after default, or
11 an arbitration award arising from a contractual
12 predispute binding arbitration clause or agreement, and
13 (2) the third-party claimant makes a written demand by
14 certified mail to settle the claim in the underlying action,
15 and the claimant's judgment or arbitration award in that
16 prior proceeding exceeded the amount of the final
17 written demand on all claims by the third-party claimant
18 made before the trial, entry of default or arbitration listed
19 above. ~~A—The final written demand sent by certified mail~~
20 ~~may not exceed the applicable policy limits and shall be~~
21 ~~deemed rejected if not responded to within 30 days of~~
22 ~~receipt of the final written demand.—Subject to~~
23 ~~subdivision (h) of Section 790.03 of the Insurance Code,~~
24 ~~the verdict's amount may be considered as evidence of~~
25 ~~bad faith, but shall not be the sole consideration.~~

26 (c) The remedies set forth in this title shall apply to
27 any insurer who violates the standards set forth in
28 subdivision (a) in its handling, processing, or settlement
29 of the claims made by a third-party claimant under the
30 insured's insurance protection.

31 (d) A professional liability insurer is not liable under
32 this title if all the following conditions apply:

33 (1) The consent of the policyholder to settlement is a
34 prerequisite to settlement under the terms of the
35 insurance policy or by statute.

36 (2) The insurance company has assessed the case
37 against the policyholder as to potential liability and
38 damages known at that time and has fully informed the
39 policyholder of that assessment.

1 (3) The policyholder's refusal to consent is not based
2 on intentionally erroneous or misleading information
3 provided by the insurer.

4 (e) A person injured in an accident arising out of the
5 operation or use of a motor vehicle, who at the time of the
6 accident was operating a motor vehicle in violation of
7 Section 23152 or 23153 of the Vehicle Code, and was
8 convicted of that offense, may not assert a cause of action
9 under this section.

10 (f) Any time period within which an action must be
11 commenced pursuant to any applicable statute of
12 limitations shall not begin until the underlying claim has
13 been resolved through a final judgment. In the event of
14 an appeal by either party, resolution of the appeal shall be
15 a prerequisite to a claim under this title.

16 (g) Nothing in this title shall abrogate or limit any
17 theory of liability or remedy otherwise available at law
18 including, but not limited to, tort remedies for the breach
19 of implied covenant and fair dealing or any theory of
20 liability or remedy based on *Comunale v. Traders &*
21 *General Ins. Co.* (1958) 50 Cal.2d 654 or *Crisci v. Security*
22 *Ins. Co.* (1967) 66 Cal.2d 425. ~~Nothing in this section shall~~
23 ~~relieve an insurer of its obligation of good faith and fair~~
24 ~~dealing to its own insured. However, the insurer cannot~~
25 ~~wrongfully use its obligation to its own insured to violate~~
26 ~~its duties under this section.~~

27 (h) The provisions of this title shall apply,
28 prospectively, ~~to events or accidents covered by the~~
29 ~~applicable insurance policy that occur on or after January~~
30 ~~1, 2000 only, and shall not apply to any of the following:~~

31 (1) *Accidents, events, occurrences, or losses that take*
32 *place before January 1, 2000.*

33 (2) *Conduct at any time by any insurer, its agents, or*
34 *employees concerning those accidents, events,*
35 *occurrences, or losses.*

36 SEC. 2. *Section 1778 of the Code of Civil Procedure,*
37 *as added by Senate Bill 1237 of the 1999–2000 Regular*
38 *Session, is amended to read:*

39 1778. If the insurer *requests or* agrees to submit a
40 claim to arbitration under Section 1777 the insurer shall

1 be conclusively presumed to have complied with the
2 duties under subdivision (a) of Section 2871 of the Civil
3 Code.

4 *SEC. 3.* Section 1872.91 is added to the Insurance
5 Code, to read:

6 1872.91. (a) The department shall conduct a closed
7 claims study of automobile insurance that provides at
8 least the same kinds of information as the August 1990
9 study, "Automobile Claims, A Study of Closed Claim
10 Payment Patterns in California," prepared by the
11 Statistical Analysis Bureau.

12 ~~(b) The study shall consist of a statistical closed claim~~
13 ~~study of automobile insurance claims closed during 1998.~~
14 ~~The study shall identify the component costs of claims,~~
15 ~~including, but not limited to, type of coverage and type~~
16 ~~of claims expense. The study shall identify the factors~~
17 ~~affecting claims costs for each county as well as statewide.~~
18 ~~The department on or before July 1, 2001, shall deliver a~~
19 ~~copy of the completed study to each committee in the~~
20 ~~Assembly and the Senate that has jurisdiction over~~
21 ~~insurance legislation.~~

22 *(b) The study shall consist of a statistical closed claim*
23 *study of automobile insurance claims closed during 1999.*
24 *The study shall identify the component costs of claims,*
25 *including, but not limited to, the items listed in*
26 *subdivision (c) by coverage for major settlement*
27 *methods, including each of the following:*

- 28 *(1) Closed without payment, no litigation.*
29 *(2) Closed with payment, no litigation.*
30 *(3) Closed without payment, litigated.*
31 *(4) Closed with payment after mediation.*
32 *(5) Closed with payment after judicial arbitration.*
33 *(6) Closed with payment after voluntary binding*
34 *arbitration.*

35 *(7) Closed with payment after trial, including appeals.*

36 *(c) The study shall include the following items, shown*
37 *separately by coverage:*

- 38 *(1) Number of claims.*
39 *(2) Amount of losses or claim payouts, including both*
40 *of the following:*

1 (A) Economic damages, shown separately by
2 category, including, but not limited to, wage loss, medical
3 treatment, property damages.

4 (B) Noneconomic damages.

5 (3) Punitive damages or bad faith awards, when
6 applicable.

7 (4) Defense costs.

8 (5) Other claim or loss adjustment expenses.

9 (6) Time period between filing of claim and final
10 settlement.

11 (d) The study shall include information on the number
12 of complaints received by the department regarding
13 unfair claim adjustment practices by insurers, and a full
14 analysis of the actions taken by the department in
15 response to those complaints.

16 (e) The department on or before July 1, 2001, shall
17 deliver a copy of the completed study to each committee
18 in the Assembly and the Senate that has jurisdiction over
19 insurance legislation.

20 (f) The department shall conduct a similar closed
21 claim study of automobile insurance claims closed during
22 2003. A copy of this study shall be delivered to each
23 committee in the Assembly and the Senate that has
24 jurisdiction over insurance legislation on or before July 1,
25 2006.

26 (g) The department shall conduct a similar closed
27 claim study of automobile insurance claims at least once
28 during each 10-year period following delivery of the study
29 mandated in subdivision (f).

30 (h) The Judicial Council shall conduct a study to
31 identify changes in claims practices and patterns caused
32 by the enactment of Senate Bill 1237 of the 1999–2000
33 Regular Session. The study shall cover the period January
34 1, 2000, to January 1, 2006, inclusive. The Insurance
35 Commissioner shall cooperate with the Judicial Council
36 in this study, and shall make available information,
37 including, but not limited to, the closed claim studies
38 specified in subdivisions (a) and (f), to the council in
39 conducting this study. A copy of this study shall be
40 delivered to each committee of the Assembly and Senate

1 *that has jurisdiction over insurance legislation on or*
2 *before July 1, 2006. The study shall include, but not be*
3 *limited to, an analysis of the following:*

4 *(1) The number of complaints filed.*

5 *(2) The number of cases in which the parties enter into*
6 *voluntary binding arbitration, and the disposition of these*
7 *cases.*

8 *(3) The number of cases that proceed to trial, and the*
9 *disposition of these cases, including appeals.*

10 *(4) The number of actions filed under Title 13.7*
11 *(commencing with Section 2870) of Part 4 of Division 3*
12 *of the Civil Code, as added by Senate Bill 1237 of the*
13 *1999–2000 Regular Session, and the disposition of these*
14 *cases, including appeals.*

15 *SEC. 4. Sections 1 and 2 of this bill shall not become*
16 *operative unless Senate Bill 1237 of the 1999–2000 Regular*
17 *Session is enacted, becomes operative, and this bill is*
18 *chaptered after Senate Bill 1237.*

